

## LICENSE AGREEMENT

This License Agreement (the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 between NESTLÉ PURINA PETCARE COMPANY, an Iowa corporation ("Licensee"), and City of Davenport, Iowa, ("Licensor" ~~or "City"~~).

### Recitals

A. Licensor is the owner of certain real property located along the 1900 block of West River Drive, Davenport, Iowa, also described as the 19.647 acres of land bounded by W. River Drive on the west, Canadian Pacific Railroad right-of-way along the north and east sides and the Riverfront Bike Trail along the south, as depicted on Plat of Survey, attached hereto as Exhibit A. (the "Licensor Property" or "Licensed Premises")

B. Licensee desires to obtain an exclusive license to use "Licensor Property" for the parking of up to 360 trailers or such greater amount as is permitted by applicable law and other purposes ancillary to the use and development of a trailer drop lot (the "Permitted Use"), and Licensor desires to grant such license, on the terms and conditions set forth in this Agreement.

### Agreements

In consideration of the Recitals set forth above, which by this reference are made a part of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Grant of License.** Licensor hereby grants Licensee an exclusive license (the "License") to use the Licensed Premises solely for the Permitted Use. Licensee shall have sole and exclusive possession of the Licensed Premises during the term of this License. The License, and Licensee's use of the Licensed Premises, shall be subject to such reasonable rules that Licensor may adopt from time to time upon Licensee's approval. The term of the License shall be ~~initially be~~ for 50 years and Licensee shall pay Licensor an annual license fee as follows:

Year 1-5:	\$1.00 annually
Year 6-10	\$6,000.00 annually (\$500/month)
Year 11-15	\$9,000.00 annually (\$750.00/month)
Years 16-25	\$12,000.00 annually (\$1,000/month)
Year 26-35	\$18,000 annually (\$1,500/month)
Year 36-45	\$21,000 annually (\$1,750/month)
Year 46-50	\$24,000 annually (\$2,000/month)

~~Licensee also has the right and option to extend this Agreement for an additional extension term of twenty five (25) years. If Licensee exercises the extension option, the rent shall be as follows:~~

~~\_\_\_\_\_ Years 51-60: \$36,000 annually (\$3,000/month)~~  
~~\_\_\_\_\_ Years 61-70: \$39,000 annually (\$3,250/month)~~

~~Years 71-75: \$42,000 annually (\$3,500/month)~~

**Comment [1b1]:** Are you ok with a single 50 year term or do you want a shorter initial term and a renewal right? I'm assuming you want the single 50 years so have modified accordingly but if I am wrong, please advise.

Payment may be lump sum January 1<sup>st</sup> of each year or monthly, on or before the first day of each month. If an annual lump sum payment is made, a 5% discount will be applied to the annual rate noted above.

2. **Term of Agreement.** This License shall be in effect for a fifty (50) year period, commencing \_\_\_\_\_ and terminating \_\_\_\_\_. ~~On or before eighteen (18) months prior to term termination, Licensee may renew this license for a 25 year extension term according to the schedule shown in Section 1 "Grant of License"~~ Further, Licensee shall have the right to terminate this Agreement at any time upon at least eighteen (18) months advance written notice.

3. **Condition of Licensed Premises; Repairs; Alterations.** Licensee agrees that Licensors has provided Licensee the opportunity to inspect the Licensed Premises Licensee accepts the Licensed Premises in "as-is" condition (other than any latent defects), subject to Article 7 below Licensee agrees to maintain said property and keep it in good repair and a sanitary condition. City may take corrective action at Licensee's expense if maintenance or cleaning is necessary and Licensee has not addressed the concern after notice and an opportunity to cure. Licensee is hereby permitted at its expense to perform such alterations and improvements as it deems necessary or desirable provided such alterations and/or improvements are performed in accordance with applicable law.

4. **Insurance, Certificate and Indemnity.**  
Licensee Insurance

Licensee shall at all times during the term of the License, at its own expense, maintain, keep in effect, furnish and deliver to Licensors certificates of liability insurance policies, insuring against all liability for injuries to persons and damage to property arising from Licensee's use of the and may do so through self-insurance. The Licensee shall secure and maintain such primary insurance policies as will protect himself or his Subcontractors from claims for bodily injuries, death or property damage which may arise from operations under this contract whether such operations be by himself or by any Subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required unless other limits are specified. The City shall be named as an additional insured under General Liability.

- (1) Statutory Worker's Compensation with waiver of subrogation in favor of the City.
- (2) General Liability
  - General Aggregate \$1,000,000
  - Each Occurrence \$1,000,000
- (3) Semi-truck Liability
  - Any semi-truck, Hired & Non-Owned
  - Combined Single Limit \$1,000,000
- (4) Excess Liability Umbrella Form \$2,000,000

Contractual Liability

The insurance required above under “Licensee Insurance”, shall:

- (1) Be Primary insurance and non-contributory.
- (2) Include contractual liability insurance coverage for the ~~Lessee~~Licensee's obligations under the INDEMNIFICATION paragraph.

#### Certificates of Insurance

Certificates of Insurance, acceptable to the City indicating insurance required by the Contract is in force, shall be filed with the City prior to approval of the Contract by the City. The Licensee shall insure that coverages afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to the City. The Licensee will accept responsibility for damages and the City's defense in the event no insurance is in place and the City has not been notified.

#### Indemnification

To the fullest extent permitted by the law, the Licensee shall defend, indemnify, and hold harmless the City, its officials and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to, all reasonable attorneys' fees to the extent arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense:

- (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and
- (2) is caused by any negligent act or omission of the Licensee, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph.

To the extent permitted by applicable law, the Licensee hereby releases and agrees to indemnify, hold harmless and defend the Licensor, its assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, to the extent caused by or attributable to, in whole or in part, any act or omission of the Licensee (or the Licensee's employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted to Transport, Use or Release of Hazardous Substances by the Licensee and the breach by the Licensee of any of its warranties, representations or covenants relating to the Transport, Use or release of Hazardous Substances, provided, however, that this shall not apply to any Hazardous Substances located, released or disposed upon the Property on or before the commencement date hereof . In any and all claims against the Licensor, its officials or any of its agents or employees by any employee of the Licensee, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this

Paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Licensee or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Licensee shall reasonably cooperate with Licensee in Licensee's defense of any such claim, action or proceeding.

**5. Waiver of Claims.** To the fullest extent permitted by law, Licensee hereby waives all claims against Licensor for any loss injury or damage suffered by Licensee, its employees, agents, servants, contractors, guests, and invitees relating to (a) loss or theft of, or damage to, property of Licensee or others, (b) injury or damage to persons or property resulting from fire, explosion, electricity, water, rain or snow, or (c) damage caused by other persons. The foregoing waiver shall not apply to the extent of Licensor's negligence or willful misconduct or the negligence or willful misconduct of anyone directly or indirectly employed by Licensor or anyone for whose acts Licensor may be liable.

**6. Default.** In the event Licensee defaults hereunder, Licensor shall provide Licensee with written notice of default and Licensee shall have thirty (30) business days to cure such default, provided such 30 day period will be extended as reasonably necessary if the default in question is not curable within the 30-day period so long as Licensee is diligently pursuing the cure thereof. Licensee's failure to cure the default within the foregoing time period shall be deemed an Event of Default. Licensor may at its option terminate this Agreement if Licensee does not cure such Event of Default within thirty (30) days after receipt of notice from Licensor.

**7. Compliance with Laws.** Licensor represents and warrants to Licensee that as of the date hereof, the Licensed Premises is in compliance with all laws and regulations concerning the Licensed Premises, including applicable environmental laws. Subject to the foregoing, Licensee shall comply with all laws and regulations concerning the Licensed Premises and Licensee's use thereof. Licensee agrees that they will not dispose of waste oil, tires, batteries, paint or other chemicals, or hazardous waste as defined by statute or ordinance anywhere on the licensed premises. Licensee shall immediately notify City of any chemical discharge, leak or spill or hazardous waste exposure event that occurs on the premises, and bear the cost of remediation for the same.

**8. Attorneys' Fees.** If Licensor or Licensee becomes a party to any litigation concerning this Agreement or the Licensed Premises, by reason of any act or omission of the other party (the "indemnifying party"), its employees, agents, servants, contractors, guests, licensees or invitees, the indemnifying party shall be liable for court costs and reasonable attorneys' fees and expenses incurred by the indemnified party in connection with any such litigation. If either party commences an action against the other party arising out of or in connection with enforcement of this Agreement, the prevailing party shall be entitled to have and recover from the other party court costs and reasonable attorneys' fees and expenses incurred by the prevailing party in connection with any such enforcement action.

**9. Miscellaneous.**

(a) The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

(b) All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed, on the third business day after in the United States Mail, certified or registered, postage prepaid, return receipt requested, or (iii) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery of such courier, in every case addressed to the party to be notified as follows:

If to Licensee:

Nestlé Purina Petcare Company  
Logistics Manager  
607 Schmidt Rd  
Davenport, IA 52802

With a copy to:

Nestle Purina PetCare Company,  
Attn: Legal Department  
One Checkerboard Square  
St. Louis, MO 63164.

If to Licensor:

Real Estate Manager  
Public Works Building  
1200 E. 46th Street  
Davenport, Iowa 52807

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the other in the manner provided herein for the service of notices. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

(c) City, including its officers, employees, or agents, maintains its right to enter upon said premises for any purpose upon reasonable advance notice.

(d) Neither Licensee nor anyone claiming by, through, or under Licensee shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material,

service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon.

(e) ~~Lessor~~This agreement simply grants an exclusive right to use, occupy and go upon the property as specified herein and is not a grant of real property interest in the land. However, Licensor represents and warrants to ~~Lessee~~Licensee that ~~Lessor~~Licensor owns the Property in fee simple absolute free of any liens, claims or encumbrances. The parties shall execute and deliver, and Licensee shall be entitled to record a Memorandum of License in the real property records evidencing and providing record notice of its rights hereunder.

(f) Licensor represents and warrants to Licensee that Licensor has good title to the Property and full and rightful authority to enter this Agreement pursuant to its terms; no joinder or approval of any other person is required with respect to Licensor's right and authority to enter this License; there are no encumbrances, leases, licenses or other agreements affecting Licensor's right to use and possess the Property; and there is no claim, suit, litigation, proceeding or action pending or threatened against Licensor or any other party that relates to the Property or the use or ownership thereof, and there is no basis for any such claim, suit, obligation, proceeding or action. Licensor covenants and agrees not to exercise any condemnation, eminent domain or similar proceeding against the Property or Licensee's interest therein.

(g) Licensee may assign or transfer this Agreement to any entity controlling, controlled by or under common control with Licensee or any entity acquiring all or substantially all of Licensee's assets. Otherwise any assignment or transfer by Licensee is subject to Licensor's approval, which shall not be unreasonably withheld, conditioned or delayed. Any assignee of either party shall take subject to all obligations and commitments of the assigning party herein.

(h) This Agreement contains all of the understandings and representations between the parties relating to the subject matter hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. No modifications of this Agreement or any of its terms shall be effective unless in writing signed by the duly authorized representatives of the parties as described herein. None of the provisions of this Agreement can be waived or modified except in a writing signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of an executed counterpart or a copy scanned into a PDF format of an executed counterpart shall be valid and have the same force and effect as an original.

(i) The terms and provisions of this Agreement shall be interpreted in accordance with and shall be governed by the laws of the State of Iowa, United States of America without giving effect to its choice-of-law provisions or to any rule construing ambiguities against the draftsman.

(j) The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable, in whole or in part, the remaining terms and provisions shall be unimpaired and the unenforceable term or provision shall be replaced by such enforceable term or provision as comes closest to the intention underlying the unenforceable term or provision.

10. **Contingencies** ~~Lessee~~Licensee's obligations under this Agreement are contingent upon the following: (a) ~~Lessee~~Licensee is able to obtain the necessary funds and internal approvals to

make its improvements to the Property;(b) ~~LesseeLicensee~~'s ability to obtain a Phase I Environmental Site Assessment of the Property and depending on the results of such Phase I, Phase II soil and groundwater investigation on targeted suspect contaminated areas identified by the Phase I; (c) Any and all required permits from applicable state and local governmental authorities have been obtained by ~~LesseeLicensee~~. ~~LesseeLicensee~~ shall have eighteen (18) months from the date of this Agreement to satisfy such contingencies and if ~~LesseeLicensee~~ is unable to satisfy such contingencies within eighteen (18) months, ~~LesseeLicensee~~ will have the option to extend the contingency period for an additional twelve month period by notice to ~~LessorLicensor~~. These contingencies are for the sole benefit of ~~LesseeLicensee~~ and may be deemed satisfied and/or waived by ~~LesseeLicensee~~ in its sole discretion at any time. If ~~LesseeLicensee~~ fails to provide any notice of failure, the contingencies shall be deemed satisfied.

11. **Licensor Termination:** At any time after the first ten (10) years of the term of this Agreement and upon at least eighteen (18) months prior written notice to Licensee, Licensor may terminate this Agreement subject to the following terms and conditions: (a) eight members of the Licensor's City Council vote to end the license; and (b) simultaneously with the delivery of the termination notice, Licensor shall deliver to Licensee the Termination Payment (as hereinafter defined) in immediately available funds. The Termination Payment is defined as a payment equal to a pro\_rata share of the Improvement Costs (as hereinafter defined), amortized on a 27-year straight-line basis, ~~together interest at an annual percentage rate equal to the prime rate as reflected in the Wall Street Journal plus three percent (3%) over the remaining term of the License~~. Anything under 6 months will be rounded down and 6 months or more will be rounded up. For example, if the License is terminated 12.5 years after execution, then the Licensor would be required to reimburse the Licensee 13/27 of the Improvement Costs. Improvement Costs are the aggregate amount of costs incurred by Licensee to improve the Licensed Premises, including all improvements and alterations undertaken by or for Licensee at the Licensed Premises, all testing, inspections and surveys undertaken by or for Licensee in anticipation of the Licensee's use of the Licensed Premises, all application and other governmental fees and taxes paid by Licensee and all professional fees (including attorney's fees) incurred by Licensee in connection therewith. Licensee will advise Licensor as to the amount of the Improvement Costs within six (6) months after the lot improvement project at the Licensed Premises is completed. This payment shall also be made by Licensor to Licensee in the event of any other partial or complete termination of this Agreement unless this Agreement is terminated by Licensee pursuant to its termination right set forth in Paragraph 2 hereof. After the first twenty-seven years of the term of this Agreement, and provided that the Improvement Costs have been fully amortized, eight members of the Licensor's City Council have voted to terminate and at least eighteen (18) months' prior written notice of termination has been provided to Licensee, Licensor may terminate this Agreement for any reason or no reason without incurring a Termination Payment.

12. **Right of First Refusal:** Licensor grants Licensee a continuing right of first refusal to purchase the Licensed Premises subject to the following terms and conditions: in the event that Licensor in good faith desires to enter a bona fide purchase and sale agreement to sell all or a portion of the Licensed Premises to a third party, Licensor shall provide Licensee with the opportunity to purchase the Licensed Premises or such portion thereof on the same terms and conditions as are set forth in the third party agreement by providing Licensee with notice and a complete copy of the agreement ("Sale Notice"). Licensee shall have fifteen (15) business days

after the date on which Licensee receives the Sale Notice to elect to purchase on the terms set forth in the Sale Notice. If Licensee fails to exercise such election within said 15-day period, then the right shall be waived with regard to said contract and Licensor shall be free to sell the Licensed Premises or such portion thereof. If the sale is not closed for any reason whatsoever within 180 days after Licensee's receipt of the Sale Notice, then this Right of First Refusal shall be reinstated and License shall be obligated to give Licensee notice of any subsequent contract or agreement and the opportunity to purchase the Licensed Premises or any portion thereof in accordance with the terms hereof. If Licensor does sell the Licensed Premises or such portion thereof during said 180 day period pursuant to said third party contract, the terms of this License shall remain in full force and effect. If Licensor does not sell the Licensed Premises or such portion thereof during said 180-day period on such terms to such purchaser, the Licensed Premises shall not be thereafter sold without Licensor's compliance again with this section.

13. **Licensor Access** Licensee agrees to provide Licensor with temporary access through the entrance gate of the Licensed Premises on an emergency basis or during periods of emergency such as natural disasters, or when access requests are previously arranged by the parties, all as needed for Licensor to access its maintenance department property located on the other side of the railroad, the location and nature of such access to be subject to the parties' mutual agreement.

Licensor and Licensee have executed this Agreement as of the date first above written.

NESTLÉ PURINA PETCARE  
COMPANY

CITY OF DAVENPORT

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_



Exhibit A- Property Description